

**SUBCHAPTER B : EMERGENCY ORDERS, TEMPORARY ORDERS,  
AND EXECUTIVE DIRECTOR AUTHORIZATIONS**

§§305.21-305.32

Effective June 5, 1997

**§305.21. Emergency Orders and Temporary Orders Authorized.**

The commission may issue emergency orders or temporary orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, when necessary to enable action to be taken more expeditiously than is otherwise provided by the Texas Water Code, Chapter 26 to effectuate the policy and purposes of this chapter.

**§305.22. Application for Orders or Authorizations to Discharge.**

(a) A person desiring to obtain a temporary or emergency order to discharge waste or pollutants, including untreated or partially treated wastewater, into or adjacent to water in the state shall submit a sworn application to the commission containing the following information and any other information the commission may reasonably require:

(1) a statement that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production) or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) a statement that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(3) an estimate of the dates on which the proposed discharge will begin and end;

(4) a statement of the volume and quality of the proposed discharge;

(5) an explanation of measures proposed to minimize the volume and duration of the discharge;

(6) an explanation of measures proposed to maximize the waste treatment efficiency of units not taken out of service or facilities provided for interim use;

(7) for temporary orders, a list of potentially affected persons in accordance with §305.48(1) of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits); and

(8) payment of appropriate application fees in accordance with §305.27 of this title (relating to Application Fees).

(b) If the applicant is other than an individual, the application must be sworn to by someone authorized to do so for the applicant, as provided for in §305.44 of this title (relating to Signatories To Applications).

(c) If the executive director issues an authorization to discharge as provided in §305.25 of this title (relating to Executive Director Authorizations To Discharge), the applicant must submit the sworn application as required in subsection (a) of this section before the date of the commission's public hearing to consider the authorization.

(d) This section does not apply to unpermitted facilities subject to TPDES regulation.

### **§305.23. Emergency Orders.**

(a) The commission may issue emergency orders relating to the discharge of waste or pollutants into or adjacent to any water in the state, where the discharge is regulated by a Texas pollutant discharge elimination system (TPDES) permit or where a TPDES permit is not required, without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, only if the commission finds the following to be true:

(1) that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss (other than economic loss caused by delays in production) or to make necessary and unforeseen repairs to a facility, that there are no feasible alternatives to the proposed discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant;

(2) that the proposed discharge will not present a significant hazard to the uses that may be made of the receiving water after the discharge;

(3) that the estimate of the dates on which the proposed discharge will begin and end and the estimate of the volume and quality of the proposed discharge submitted by the applicant are reasonable and are attainable; and

(4) that the measures proposed by the applicant to minimize the volume and duration of the discharge, and to maximize the waste treatment efficiency of treatment units not taken out of service or treatment facilities to be provided for interim use are reasonable.

(b) If the commission issues an emergency order under the authority of subsection (a) of this section without a hearing, the order shall fix a time and place for a hearing to be held before the commission which shall be held as soon after the emergency order is issued as is practicable and after such notice as is required under §305.24(a) of this title (relating to Notice).

(c) This section does not apply to discharges of hazardous waste or unpermitted facilities subject to TPDES regulation.

### **§305.24. Notice.**

(a) Emergency orders relating to the discharge of waste or pollutants may be issued by the commission without prior notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) Temporary orders require a hearing before issuance of the order. The commission shall give notice of not less than 20 days before the date set for the hearing on the temporary order to all affected persons, and to all persons as may be required by law.

(c) The requirements of the Texas Water Code, §26.022, relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held for an emergency order, but such general notice of the hearing shall be given as the commission considers practicable under the circumstances.

(d) This section does not apply to discharges of hazardous waste.

**§305.25. Executive Director Authorizations to Discharge.**

If emergency conditions exist which make it necessary to take action more expeditiously than is otherwise provided by this subchapter, the executive director may authorize the discharge of untreated or partially treated wastewater from a permitted facility into or adjacent to water in the state if he determines that the discharge is unavoidable to prevent loss of life, serious injury, severe property damage, or severe economic loss, or to make necessary and unforeseen repairs to the facility, that there are no feasible alternatives to the discharge, and that the discharge will not cause significant hazard to human life and health, unreasonable damage to property of persons other than the applicant, or unreasonable economic loss to persons other than the applicant. If the executive director issues an authorization to discharge under this authority, the commission shall hold a hearing as provided for in §305.23(b) of this title (relating to Emergency Orders) as soon as practicable but in no event later than 10 days after issuance of the authorization, to affirm, modify or set aside the authorization. This section does not enable the executive director to authorize the discharge of hazardous waste.

**§305.26. Hearings for Temporary Orders, Executive Director Authorizations and Emergency Orders.**

(a) At the hearing for an executive director authorization or commission emergency order, the commission shall affirm, modify or set aside the authorization or emergency order. For any hearing on a temporary order, executive director authorization or emergency order the following procedures will apply:

(1) Parties will be designated by the commission. To be designated as a party, the person seeking party status must show a justiciable interest. For each hearing under this section, the applicant, the public interest advocate of the commission and the executive director of the commission are designated as parties by rule.

(2) The testimony of all witnesses will be under oath, with an opportunity for questioning by the commission and cross-examination by the other parties.

(3) Other parties to the hearing will be given an opportunity to present rebuttal evidence and testimony.

(4) The applicant will have the burden of proving its need for an authorization or emergency order, and will have the right to open and close the evidentiary parts of the hearing; the fact that the executive director has authorized such discharge under §305.25 of this title (relating to Executive Director Authorizations to Discharge), standing alone, will not constitute evidence of the need for such authorization.

(5) The commission will have the right to limit the number of witnesses; to limit the time for direct questioning or cross-examination of a witness; to refuse illustrative and documentary evidence; and to limit argument.

(b) Before the date set for hearing by the commission to affirm, modify or set aside an executive director authorization, the applicant shall submit a sworn application supporting such authorization, as specified under §305.22(a) of this title (relating to Application for Orders on Authorizations to Discharge).

#### **§305.27. Application Fees.**

(a) The application fee for an emergency order to discharge under §305.23 of this title (relating to Emergency Orders) or for a solid waste activity under §305.29 of this title (relating to Emergency Orders for Solid Waste Activities) or §305.30 of this title (relating to Emergency Actions Concerning Hazardous Waste), or a temporary order under §305.22 of this title (relating to Application for Orders or Authorizations to Discharge) is \$100 plus \$50 to cover the cost of required notice. The fee is payable at the time the application is filed.

(b) The application fee for an executive director authorization is \$100 plus \$50 to cover the cost of required notice. The fee is payable, along with the sworn application required by §305.22 of this title (relating to Application for Orders or Authorizations to Discharge), before the date of the commission's public hearing to consider the authorization.

#### **§305.28. Renewals of Emergency Orders and Temporary Orders.**

The duration of any discharge emergency order or temporary order issued pursuant to this chapter shall not exceed 180 days, but the orders may be renewed one time upon proper application. Applications for renewal may be filed with the commission, along with payment of the application fee. Renewal applications will be treated as new applications and the temporary order application procedures of this chapter will be followed.

#### **§305.29. Emergency Orders for Solid Waste Activities.**

(a) The commission may issue a mandatory or prohibitory emergency order regarding any activity of solid waste management within its jurisdiction, whether the activity is covered by a permit or not, if the commission determines that an emergency exists requiring immediate action to protect public health and safety or the environment. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing before the commission to affirm, modify, or set aside the order.

(c) The requirements of Health and Safety Code §361.088, relating to notice do not apply to a hearing to affirm, modify or set aside an emergency order issued under this section, but such general notice of the hearing shall be given in accordance with commission rules.

(d) An emergency order issued under this section shall not exceed 90 days in duration but may be renewed. For emergency orders affecting UIC permits, the duration may be no longer than required to prevent the hazard.

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**§305.30. Emergency Actions Concerning Hazardous Waste.**

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a non-permitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management.

(b) A party, other than the executive director, requesting such an emergency order, shall file a written request with the executive director setting forth the reason for the request including a description of the imminent and substantial endangerment to human health or safety or the environment, and alternatives investigated.

(c) The executive director shall review the request and may require the requesting party to supply additional information as may be reasonably required to assist the commission in making the findings set out in subsection (a) of this section.

(d) The executive director shall forward the request and the executive director's recommendation, including any proposed emergency order and findings to the commission.

(e) An emergency order issued by commission under this section:

(1) shall not exceed 90 days in duration;

(2) shall clearly specify the hazardous wastes to be received, and the manner and location of their processing, storage, or disposal;

(3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment;

(4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste); and

(5) for UIC permits issued under this section, shall be for no longer duration than required to prevent the hazard.

(f) Public notice shall accompany the emergency order, shall allow at least 45 days for public comment and shall be given at least 30 days before the hearing on the emergency order. Public notice of the order may be given at the same time as public notice and opportunity for comment on the order, and the two notices may be combined. If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing before the commission to affirm, modify, or set aside the emergency order. The notice shall include:

- (1) the name and address of the applicant;
- (2) the name and location of the hazardous waste management facility;
- (3) a brief description of the wastes involved;
- (4) a brief description of the action authorized or to be authorized, and the reasons for authorization;
- (5) the duration of the emergency order; and
- (6) the name and address of the commission (the office granting the order).

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**§305.31. Emergency Orders Relating to Radioactive Substances.**

(a) When an emergency exists as a result of a matter under the commission's jurisdiction that requires immediate action to protect the public health or safety or the environment, the executive director may recommend and the commission may, without notice or hearing, issue an order stating the existence of the emergency and requiring that actions be taken to meet the emergency.

(b) The commission may, without notice or hearing, issue an emergency order directing any action or corrective measure needed to correct or remove the threat to public health or safety or the environment:

(1) when the executive director determines that byproduct material, as defined in subparagraph (B) of the definition of "byproduct material" in §336.2 of this title (relating to Definitions), or the operation generating the byproduct material threatens the public health or safety or the environment; or

(2) to a person responsible for an activity, including a past activity, concerning the recovery or processing of source material or the disposal of byproduct material, as defined in subparagraph (B) of the definition of "byproduct material" in §336.2 of this title, if it appears that there is an actual or threatened release of source material or byproduct material that presents an imminent and substantial danger to the public health or safety or the environment, regardless of whether the activity was lawful at the time; or

(3) when the commission determines that radioactive substances under its jurisdiction threatens the public health or safety or the environment and that the licensee managing the radioactive substances is unable to remove the threat.

(c) An emergency order issued under subsection (b)(2) of this section may restrain the person to whom the order is directed from allowing or continuing the release or threatened release and require the person to take any action necessary to provide and implement an environmentally-sound remedial action plan designed to eliminate the release or threatened release.

(d) An emergency order issued under this section takes effect immediately. A person to whom an emergency order is directed shall comply immediately with that order.

(e) The emergency order shall be delivered to the person to whom the order is directed by hand delivery or by certified mail, return receipt requested. Affidavit of personal service, proof of mailing to the proper address, or the receipt shall be conclusive evidence of service. In the case of an order issued under subsection (b)(2) of this section, if delivery by hand delivery or certified mail fails, the order may be served on the person by publication once in the Texas Register and once in a newspaper of general circulation in each county of the person's last known address.

(f) If the commission issues the emergency order without notice or hearing:

(1) In the case of an order issued under subsection (a) or (b)(3) of this section, the commission shall provide the person to whom the order is directed an opportunity for a hearing on written request within 30 days of the date of the order. If a hearing is requested, notice of the hearing shall be given to the person to whom the order is directed by hand delivery or certified mail, return receipt requested, at least 10 days before the hearing. A requested hearing shall be held not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing request.

(2) In the case of an order issued under subsection (b)(1) or (2) of this section, the order shall set a time, at least 10 but not more than 30 days following the date of issuance of the order, and a place for a hearing to be held.

(g) All provisions of the emergency order shall remain in full force and effect during the pendency of a hearing, unless otherwise altered by the commission. At the conclusion of the hearing and after the proposal for decision is made, the commission shall make a determination to affirm, modify, or revoke the emergency order and may modify, revoke, or suspend the license based on the determination made.

(h) The commission shall use the financial assurance mechanism provided by the licensee to pay the costs of actions and corrective measures that are taken or that are to be taken under this section. The commission shall send to the Comptroller of Public Accounts a copy of its order and the necessary documents authorizing the Comptroller of Public Accounts to:

(1) enforce the financial assurance mechanism supplied by the licensee;

(2) convert the necessary amount of the financial assurance mechanism into cash; and

(3) disburse from the Radiation and Perpetual Care Fund the amount necessary to pay the costs of the commission's actions and corrective measures.

(i) If the costs of actions and corrective measures require more funds than the financial assurance mechanism has provided, the commission shall request the Attorney General to seek reimbursement from the licensee or person causing the threat.

(j) The commission shall seek reimbursement through a commission order or shall request the Attorney General to file suit for reimbursement if the commission uses the Radiation and Perpetual Care Fund to pay for actions or corrective measures to remedy spills or contamination by radioactive material resulting from a violation of the Texas Radiation Control Act (TRCA), the rules of this chapter, or a license or order issued by the commission under the TRCA or this chapter.

**§305.32. Emergency Impoundment of Radioactive Material.**

(a) In the event of an emergency, the executive director or the commission shall have the authority to impound or order the impoundment of radioactive material possessed by any person not equipped to observe or failing to observe the provisions of the Texas Radiation Control Act (TRCA), the rules of Chapter 336 of this title (relating to Radioactive Substance Rules), or a license or order issued by the commission under the TRCA or Chapter 336 of this title.

(b) As determined by the commission, the impounded radioactive material may be:

- (1) returned to a properly licensed owner who did not cause the emergency;
- (2) released as evidence to police or courts;
- (3) returned to a licensee after the emergency conditions have ceased and any compliance action is settled;
- (4) sold;
- (5) disposed of at an authorized disposal facility; or
- (6) otherwise appropriately transferred or disposed.

(c) If disposition of the impounded radioactive material is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If action is not necessary to protect the public health and safety, the commission shall give written notice to the owner and/or possessor of the intention to dispose of the material. Notice shall be given by personal service or certified mail, return receipt requested. The owner or possessor shall have 30 days from the date of personal service or mailing to make a written request for a hearing. If no hearing is requested within that time, the commission may take the proposed action.

(d) Upon disposition of impounded radioactive material, the commission may notify the owner and/or possessor of any expense the commission may have incurred during the impoundment and/or



disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the commission may request the Attorney General to file suit against the owner or possessor for the amount requested. If the owner or possessor desires to contest the amount of such charge, he may request a hearing.

(e) If the commission determines from the facts available that impounded radioactive material is abandoned, with no reasonable evidence showing the owner or possessor, the commission may make such disposition of the material as it sees fit.

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